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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN STEAMSHIP OWNERS
MUTUAL PROTECTION AND
INDEMNITY ASSOCIATION, INC.,

Plaintiff,

- against -

ALCOA STEAMSHIP CO., INC. and
OTHER ENTITIES,

Defendants.

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ECF CASE

04 Civ. 04309 (LAK)

**ANSWER TO SECOND
AMENDED COMPLAINT**

Defendant Mu-Petco Shipping Co., Inc. ("Mu-Petco"), by its attorneys,
McMahon & Connell, P.C., answers the Second Amended Complaint ("SAC"), as
follows:

FIRST: Denies knowledge or information sufficient to form a belief as
to the truth of the allegations of SAC ¶ 1, except admits Mu-Petco had entered unmanned
barges in the American Steamship Owners Mutual Protection and Indemnity Association
("American SS") for marine protection and indemnity coverage which entries, upon

information and belief, were done in or about the late 1970's, and were canceled in or about the early 1980's following repossession of the barges by MARAD, the mortgagee.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 2 through 13.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 14-15, except admits American SS is a mutual indemnity insurance association of shipowners with an office in New York, NY, and after 1940 and prior to February 20, 1989, Mu-Petco had unmanned barges entered with American SS.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 16-17, except admits SAC demands relief under 28 U.S.C. § 2201 with respect to its marine protection and indemnity coverage.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 18 through 23.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 24-52.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶ 53, except denies it ever received indemnification from American SS for an IBNR claim of the sort referred to in the SAC.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 54 through 57.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 58 through 61, except denies it made any demands upon, or threatened litigation against, American SS.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations of SAC ¶¶ 62 through 71.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
DEFENDANT MU-PETCO AVERS:**

ELEVENTH: Mu-Petco has not had a vessel or barge entered with American SS for over twenty years; it has not been reimbursed by American SS for any claim related to occupational diseases of seamen, or others; it has never made claim against American SS for any such reimbursement; no seaman, or anyone else, has ever made claim against Mu-Petco for occupational disease of any sort; the Mu-Petco barges which were once entered with American SS were all unmanned; and, Mu-Petco has neither knowledge of, nor involvement in, any IBNR claims, or the Discretionary Practice, referred to in the SAC.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
MU-PETCO AVERS:**

TWELFTH: To the extent American SS by its SAC may be attempting to reopen insurance years long since closed for the purpose of attempting to obtain from Mu-Petco, which has not been operational for approximately twenty years, any financial contribution toward asbestosis-related claims, or any other claims, any such attempt would require the Court to engage in a retroactive rewrite of the terms of entry applicable to the Mu-Petco barges; and to inflict egregious prejudice upon Mu-Petco in the attempt

by American SS to avoid the consequences of a “Discretionary Practice” American SS apparently condoned, about which Mu-Petco had no involvement, and about which Mu-Petco knows nothing; and further, any such attempt would be barred by the relevant American SS terms of entry, applicable statute of limitation which is no more than six years, and laches.

WHEREFORE, defendant Mu-Petco Shipping Co., Inc. demands judgment dismissing the Second Amended Complaint insofar as it relates to it, and for its costs and disbursements.

Dated: New York, New York
October 19, 2004

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